

HOUSE BILL 984

N1

11r1618
CF SB 266

By: **Delegate Braveboy**

Introduced and read first time: February 11, 2011

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Common Ownership Communities – Dispute Settlement**
3 **Mechanism**

4 FOR the purpose of altering the application of a certain dispute settlement mechanism
5 under the Maryland Condominium Act; establishing a certain dispute
6 settlement mechanism under the Maryland Homeowners Association Act;
7 requiring a governing body of a homeowners association to follow certain
8 procedures before imposing a sanction for a rule violation; authorizing a certain
9 action for damages or injunctive relief under certain circumstances; establishing
10 that the failure of the governing body of a homeowners association to enforce
11 certain provisions is not a waiver of the right to enforce a provision; providing
12 for the application of this Act; and generally relating to the Maryland
13 Condominium Act, the Maryland Homeowners Association Act, and common
14 ownership community dispute settlement procedures.

15 BY repealing and reenacting, with amendments,
16 Article – Real Property
17 Section 11–113
18 Annotated Code of Maryland
19 (2010 Replacement Volume and 2010 Supplement)

20 BY adding to
21 Article – Real Property
22 Section 11B–111.7
23 Annotated Code of Maryland
24 (2010 Replacement Volume and 2010 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

27 **Article – Real Property**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 11–113.

2 (a) [Unless the declaration or bylaws state otherwise, the] **THE** dispute
3 settlement mechanism provided by this section is applicable to complaints or demands
4 formally arising on or after [January 1, 1982] **OCTOBER 1, 2011**.

5 (b) The council of unit owners or board of directors may not impose a fine,
6 suspend voting, or infringe upon any other rights of a unit owner or other occupant for
7 violations of rules until the following procedure is followed:

8 (1) Written demand to cease and desist from an alleged violation is
9 served upon the alleged violator specifying:

10 (i) The alleged violation;

11 (ii) The action required to abate the violation; and

12 (iii) A time period, not less than 10 days, during which the
13 violation may be abated without further sanction, if the violation is a continuing one,
14 or a statement that any further violation of the same rule may result in the imposition
15 of sanction after notice and hearing if the violation is not continuing.

16 (2) Within 12 months of the demand, if the violation continues past
17 the period allowed in the demand for abatement without penalty or if the same rule is
18 violated subsequently, the board serves the alleged violator with written notice of a
19 hearing to be held by the board in session. The notice shall contain:

20 (i) The nature of the alleged violation;

21 (ii) The time and place of the hearing, which time may be not
22 less than 10 days from the giving of the notice;

23 (iii) An invitation to attend the hearing and produce any
24 statement, evidence, and witnesses on his or her behalf; and

25 (iv) The proposed sanction to be imposed.

26 (3) A hearing occurs at which the alleged violator has the right to
27 present evidence and present and cross-examine witnesses. The hearing shall be held
28 in executive session pursuant to this notice and shall afford the alleged violator a
29 reasonable opportunity to be heard. Prior to the effectiveness of any sanction
30 hereunder, proof of notice and the invitation to be heard shall be placed in the minutes
31 of the meeting. This proof shall be deemed adequate if a copy of the notice, together
32 with a statement of the date and manner of delivery, is entered by the officer or
33 director who delivered the notice. The notice requirement shall be deemed satisfied if

1 the alleged violator appears at the meeting. The minutes of the meeting shall contain
2 a written statement of the results of the hearing and the sanction, if any, imposed.

3 (4) A decision pursuant to these procedures shall be appealable to the
4 courts of Maryland.

5 (c) If any unit owner fails to comply with this title, the declaration, or
6 bylaws, or a decision rendered pursuant to this section, the unit owner may be sued for
7 damages caused by the failure or for injunctive relief, or both, by the council of unit
8 owners or by any other unit owner. The prevailing party in any such proceeding is
9 entitled to an award for counsel fees as determined by court.

10 (d) The failure of the council of unit owners to enforce a provision of this
11 title, the declaration, or bylaws on any occasion is not a waiver of the right to enforce
12 the provision on any other occasion.

13 **11B-111.7.**

14 (A) THE DISPUTE SETTLEMENT MECHANISM PROVIDED BY THIS
15 SECTION IS APPLICABLE TO COMPLAINTS OR DEMANDS FORMALLY ARISING ON
16 OR AFTER OCTOBER 1, 2011.

17 (B) THE GOVERNING BODY OF A HOMEOWNERS ASSOCIATION MAY NOT
18 IMPOSE A FINE, SUSPEND VOTING, OR INFRINGE ON ANY OTHER RIGHTS OF A
19 LOT OWNER FOR VIOLATIONS OF RULES UNTIL THE FOLLOWING PROCEDURE IS
20 FOLLOWED:

21 (1) WRITTEN DEMAND TO CEASE AND DESIST FROM AN ALLEGED
22 VIOLATION IS SERVED ON THE ALLEGED VIOLATOR SPECIFYING:

23 (I) THE ALLEGED VIOLATION;

24 (II) THE ACTION REQUIRED TO ABATE THE VIOLATION; AND

25 (III) A TIME PERIOD, NOT LESS THAN 10 DAYS, DURING
26 WHICH THE VIOLATION MAY BE ABATED WITHOUT FURTHER SANCTION, IF THE
27 VIOLATION IS A CONTINUING ONE, OR A STATEMENT THAT ANY FURTHER
28 VIOLATION OF THE SAME RULE MAY RESULT IN THE IMPOSITION OF SANCTION
29 AFTER NOTICE AND HEARING IF THE VIOLATION IS NOT CONTINUING.

30 (2) WITHIN 12 MONTHS OF THE DEMAND, IF THE VIOLATION
31 CONTINUES PAST THE PERIOD ALLOWED IN THE DEMAND FOR ABATEMENT
32 WITHOUT PENALTY OR IF THE SAME RULE IS VIOLATED SUBSEQUENTLY, THE
33 GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION SERVES THE ALLEGED

1 VIOLATOR WITH WRITTEN NOTICE OF A HEARING TO BE HELD BY THE
2 GOVERNING BODY IN SESSION. THE NOTICE SHALL CONTAIN:

3 (I) THE NATURE OF THE ALLEGED VIOLATION;

4 (II) THE TIME AND PLACE OF THE HEARING, WHICH TIME
5 MAY BE NOT LESS THAN 10 DAYS FROM THE GIVING OF THE NOTICE;

6 (III) AN INVITATION TO ATTEND THE HEARING AND
7 PRODUCE ANY STATEMENT, EVIDENCE, AND WITNESSES ON HIS OR HER
8 BEHALF; AND

9 (IV) THE PROPOSED SANCTION TO BE IMPOSED.

10 (3) A HEARING OCCURS AT WHICH THE ALLEGED VIOLATOR HAS
11 THE RIGHT TO PRESENT EVIDENCE AND PRESENT AND CROSS-EXAMINE
12 WITNESSES. THE HEARING SHALL BE HELD IN ACCORDANCE WITH THIS NOTICE
13 AND SHALL AFFORD THE ALLEGED VIOLATOR A REASONABLE OPPORTUNITY TO
14 BE HEARD. PRIOR TO THE EFFECTIVENESS OF ANY SANCTION, PROOF OF
15 NOTICE AND THE INVITATION TO BE HEARD SHALL BE PLACED IN THE MINUTES
16 OF THE MEETING. THIS PROOF SHALL BE DEEMED ADEQUATE IF A COPY OF THE
17 NOTICE, TOGETHER WITH A STATEMENT OF THE DATE AND MANNER OF
18 DELIVERY, IS ENTERED BY THE OFFICER OR DIRECTOR WHO DELIVERED THE
19 NOTICE. THE NOTICE REQUIREMENT SHALL BE DEEMED SATISFIED IF THE
20 ALLEGED VIOLATOR APPEARS AT THE MEETING. THE MINUTES OF THE MEETING
21 SHALL CONTAIN A WRITTEN STATEMENT OF THE RESULTS OF THE HEARING AND
22 THE SANCTION, IF ANY, IMPOSED.

23 (4) A DECISION IN ACCORDANCE WITH THESE PROCEDURES
24 SHALL BE APPEALABLE TO THE COURTS OF MARYLAND.

25 (C) IF ANY LOT OWNER FAILS TO COMPLY WITH THIS TITLE, THE
26 DECLARATION, OR BYLAWS, OR A DECISION RENDERED IN ACCORDANCE WITH
27 THIS SECTION, THE LOT OWNER MAY BE SUED FOR DAMAGES CAUSED BY THE
28 FAILURE OR FOR INJUNCTIVE RELIEF, OR BOTH, BY THE GOVERNING BODY OF
29 THE HOMEOWNERS ASSOCIATION OR BY ANY OTHER LOT OWNER. THE
30 PREVAILING PARTY IN ANY SUCH PROCEEDING IS ENTITLED TO AN AWARD FOR
31 COUNSEL FEES AS DETERMINED BY COURT.

32 (D) THE FAILURE OF THE GOVERNING BODY OF A HOMEOWNERS
33 ASSOCIATION TO ENFORCE A PROVISION OF THIS TITLE, THE DECLARATION, OR
34 BYLAWS ON ANY OCCASION IS NOT A WAIVER OF THE RIGHT TO ENFORCE THE
35 PROVISION ON ANY OTHER OCCASION.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
2 construed to apply only prospectively and may not be applied or interpreted to have
3 any effect on or application to any complaint or demand arising before the effective
4 date of this Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2011.